

Representative Hawkins was also a strong proponent of projects designed to benefit the residents of his district. Throughout his career, he emphasized providing funding for such projects as library additions, a reading initiative for area schools, drug testing for student athletes, and a multitude of highway projects. In fact, his efforts at securing transportation funding for his district led the citizens of Hoover, Alabama, to request that four miles of Alabama 150 be named after him because of his assistance in ensuring the widening of that highway.

Representative Hawkins, a graduate of Marion Military Institute in Marion, Alabama, and the University of Alabama, was a distinguished veteran of World War II. He was retired from Alabama Power Company after a long tenure as a special projects manager.

Mr. Speaker, I ask my colleagues to join me in remembering a dedicated public servant and long-time advocate for Jefferson County, Alabama. Representative Hawkins will be deeply missed by his family—his wife, Betty Hawkins, and his sons, John Hawkins, III, Bill Hawkins, and Davis Hawkins—as well as the countless friends he leaves behind. Our thoughts and prayers are with them all at this difficult time.

HONORING THE MEMORY OF MR.  
RALPH R. WILCOX, SR.

**HON. JO BONNER**

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Friday, July 9, 2004*

Mr. BONNER. Mr. Speaker, Mobile County, Alabama, and indeed the entire First Congressional District recently lost a dear friend, and I rise today to honor him and pay tribute to his memory.

Ralph Wilcox, Sr., was a devoted family man and dedicated community servant throughout his entire life. He was retired following a long career with the Kimberly Clark Corporation, and in 1982 assumed a position on the board of directors of the Mobile County Water, Sewer and Fire Protection Authority. As a part of this organization, Mr. Wilcox and his fellow board members were responsible for oversight of one of the largest public utility and fire protection organizations in the State of Alabama, consisting of over 400 miles of water lines in Mobile County.

A lifelong resident of Theodore, Alabama, Mr. Wilcox was also actively involved in the life of his community, participating in several area youth organizations. He served on the council for the Boy Scouts of America and was an active member of the board of the Theodore Athletic Association. In 1980, he was inducted as member of the Mobile Youth Baseball Hall of Fame, and was nominated by the Tillman's Corner Chamber of Commerce as its Citizen of the Year.

Mr. Speaker, I ask my colleagues to join me in remembering a dedicated community servant and long-time advocate for Mobile County, Alabama. Ralph Wilcox, Sr., will be deeply missed by his family—his wife, Margaret Floyd Wilcox, his daughters, Stephanie Van Cleave and Margie Wilcox, his son, Ralph "Hoppy" Wilcox, Jr., his sister, Lucy Clark, seven grandchildren, and one great-grandchild—as well as the countless friends he leaves behind.

Our thoughts and prayers are with them all at this difficult time.

ESOP PROMOTION AND  
IMPROVEMENT ACT OF 2004

**HON. CASS BALLENGER**

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, July 9, 2004*

Mr. BALLENGER. Mr. Speaker, I am introducing legislation today to promote employee ownership through employee stock ownership plans (ESOPs). Most of our colleagues are familiar with these plans, but are they aware that the most common form of providing stock ownership to non-managerial employees today is through ESOPs?

During my service in the House, Congress has expanded employee ownership in America. I have worked to expand ownership through ESOPs by introducing, cosponsoring and advocating legislation. Many new provisions of ESOP law first surfaced in legislation I introduced in 1990, 1991, 1993, and 1995. Through the years, I have worked to build bipartisan support for ESOPs in Congress.

Let me say to my colleagues that ESOPs are not just special arrangements for the top executives in a company. ESOPs are broad-based stock ownership plans that, over the past 30 years, have created significant wealth for employees. In many instances, they have been the innovators in participatory management practices that respect the individual while maximizing the performance of the company.

Studies demonstrate that the overwhelming majority of employee-owned companies are more successful and treat their employees better than non-employee-owned companies. For example, in the most comprehensive study of ESOP companies ever done, over 1100 ESOP companies were matched against their counterparts for an eleven-year period. The ESOP companies had a survivability rate 15 percent greater than the non-ESOP companies, had annual sales 2.4 percent greater on average, and provided more retirement benefits than their counterparts. In another study, Washington State's Economic Development Office found in 1997 and 1998 that ESOP companies in Washington State, when compared with non-employee-owned companies, paid higher wages, had better retirement, and had twice the retirement income for employees.

Despite all this favorable data, I cannot say that ESOP companies are always successful. But, I will say that they are usually high-performing companies that share with employees the wealth they help create and bring a real ownership culture into the workplace.

Overall, we have good ESOP laws on the books through our tax code and the Employee Retirement Income Security Act, which is overseen by the Department of Labor. My legislation does not unravel existing law, nor does it overreach with new, costly tax incentives for ESOP creation. Rather, my bill is a modest step toward aiding the creation of employee ownership through ESOPs and helping existing ESOP companies maximize their ownership structure.

Primarily, the ESOP Promotion and Improvement Act of 2004 would make minor changes in tax law to treat S-corps the same

as C-corps in the ESOP arena, which would help foster ESOP creation. My legislation would also extend to ESOPs some of the popular features accorded to retirement programs such as 401K's. Following is a brief explanation of my legislation:

First, I will clarify what was really an oversight in the drafting of the 1997 law encouraging S corporations to sponsor ESOPs. The 1997 law prevented S corporations from taking a tax deduction for dividends ('distributions on current earnings'). Since S corporations do not pay a corporate level tax, it is reasonable not to give a corporate level tax deduction. However, under current law, distributions from current earnings on ESOP stock paid to employees of S-corps are subject to a 10 percent penalty tax because the payments are treated as if they were early withdrawals from plan contributions to the ESOP. Clearly, Congress never intended for S corporations to have their dividends on ESOP stock treated more harshly than C corporation dividends paid on ESOP stock.

To address this problem, my legislation does away with the unfair 10 percent penalty and makes it clear that, as in C corporations, dividends paid by an S corporation on ESOP stock can be deducted if the deduction is used to pay the debt incurred to acquire the stock for the employees through the ESOP.

Next, my legislation permits the owners of S corporation stock to sell that stock to an ESOP and, under tight rules, to defer the gain on that sale if the following conditions are met. First, the ESOP must hold at least 30 percent of the outstanding stock of the S corporation. Second, the seller must reinvest his or her proceeds in American companies. This treatment has been permitted for owners of C stock of a private company since 1984, and it has been a boon to ESOP creation. In fact, surveys by the ESOP Association show that 70 to 75 percent of the ESOP companies in America were created by exiting shareholders of private companies using this 1984 law. I believe that if this provision, Code Section 1042, is expanded to include S corporations, there will be many more S corporation ESOPs.

I believe we also need to clarify a 1989 law that the IRS has stretched too far. Under an IRS regulation interpreting the corporate Alternative Minimum Tax (AMT), C corporation dividends that are paid on ESOP stock are calculated as part of a company's adjusted current earnings, which is used in calculating the corporate AMT. Three taxpayers have taken cases all the way to the Court of Appeals saying the IRS went beyond the reach of the law in this interpretation. However, the Courts have rejected these claims, stating that the IRS has wide discretion in promulgating regulations. We should reaffirm our commitment to ESOP creation and clarify that Congress never intended to make an ESOP benefit a tax liability by overturning these IRS rulings.

Finally, my bill contains two technical amendments clearing up some unfair and out of date elements of the 1984 IRC 1042 provision. My bill clarifies who can participate in a 1042 ESOP, and it permits the proceeds from a 1042 sale to be invested in mutual funds of U.S. stock, versus requiring direct stock purchases. In addition, my bill brings parity to ESOPs with other defined contribution plans by permitting ESOP participants to withdraw money from the ESOP under limited circumstances to pay for a first-time home or college tuition.

With these few provisions, my legislation will do much to advance the cause of employee ownership, making ESOPs more effective and fostering the creation of many more ESOP companies. I thank the House and my colleagues for their time, and I ask that they consider joining me by cosponsoring this legislation.

#### SECTION-BY-SECTION EXPLANATION OF ESOP PROMOTION AND IMPROVEMENT ACT OF 2004

Makes six amendments to the Internal Revenue Code to improve the operation of existing ESOPs for both the plan sponsor and the employee participants, and in some instances make the creation of a new ESOP easier and more attractive.

Section 1. Clarifies that the 1996 and 1997 laws permitting S corporations to sponsor employee ownership through ESOPs allows S corporation distributions on current earnings (referred to as dividends in C corporations) on ESOP shares to be utilized in the same way as dividends under a 1984 law and 1986 law applying to dividends in a C corporation. Specifically, this section would permit the distributions from current earnings by an S corporation on ESOP stock to be passed through to employees without the 10 percent early withdrawal tax currently imposed on the employees. It would also permit distributions on current earnings on ESOP stock to be used to pay the ESOP acquisition debt. Regular income tax will still be due and, in keeping with current law, the S corporation would not be permitted a tax deduction for the distributions from current earnings on ESOP stock. \*(The distributions from current earnings are not to be confused with regular contributions to the ESOP by the S corporation which would still continue to be subject to early withdrawal penalties if withdrawn by an employee before death, termination, disability, or retirement.)\*

Section 2. Permits the seller of stock to an S corporation ESOP to utilize the current law ESOP tax deferral rollover tax benefit (IRC 1042), under the same restrictions applied to sellers to C corporation ESOPs. In general, to take advantage of IRC 1042, the ESOP must hold at least 30 percent of the corporation's highest class of stock at close of transaction, and the seller must reinvest the proceeds of the sale into the equities of operating U.S. corporations. If these conditions and others are met, the seller may defer the capital gains tax on his or her proceeds until he or she disposes of the qualified replacement property acquired with the sale proceeds. Furthermore, the benefit is applicable only to sales of non-publicly traded stock.

Section 3. Reverses a series of federal court decisions that have upheld a 1989 regulation by the Internal Revenue Service that includes tax deductions taken for dividends paid on ESOP stock when calculating a C-corp's AMT liability. This IRS regulation imposes the corporate AMT under an interpretation of IRC Section 56 that deductible ESOP dividends are included under the preference item known as ACE, or adjusted current earnings. Despite reasoned challenges to the IRS regulation by three taxpayers, courts have upheld the IRS regulations.

Section 4. Makes two minor changes to IRC Section 1042 (first enacted in 1984). The changes would make this ESOP tax benefit more reasonable, particularly due to developments since its enactment. Specifically, this section permits the proceeds from a 1042 sale to be reinvested in mutual funds that are invested in U.S. equities, and provides that an owner of 25 percent or more of one class of non-voting stock will not be automatically prohibited from participating in an ESOP with 1042 securities, and aggregates

the 25 percent owner restriction on participation in a 1042 ESOP to all of the outstanding shares of the corporation, not just one class of shares.

Section 5. Permits early withdrawals from ESOPs (as with other ERISA plans) for purposes of a first time home purchase or payment of college tuition, with various restrictions, including that the withdrawal may not be more than 10 percent of an account balance, and the individual has had to participate five years in the ESOP.

#### PAYING TRIBUTE TO SCOTT TUCKER

##### HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 9, 2004

Mr. McINNIS. Mr. Speaker, it is my privilege to rise today to recognize Scott Tucker of Golden, Colorado. Recently, Scott announced his retirement from his position as the executive director of the Urban Drainage and Flood Control District. As he moves on to future challenges, I would like to acknowledge his dedication and commitment to better his community before this body of Congress and this nation.

Scott has committed his career to addressing and solving problems pertaining to water resources in urban communities. After receiving a bachelor's and master's degree in civil engineering, Scott began his career in water resources. He first came to work in Colorado in 1970 for the Urban Water Resources Research Program. Two years later he joined the Urban Drainage and Flood Control District, where he is now the Executive Director. As Executive Director, he oversaw programs involving master planning, design and construction, maintenance, floodplain management, and projects involving the South Platte River. He retires from Urban Drainage and Flood Control District after thirty-two years of service.

In addition to his work in water resources, he is an active member of his community. As an avid skier, he is involved in the National Ski Patrol System, where he holds the leadership position of Treasurer. Additionally, he participates in competitive bicycle racing and is a member of the Bicycle Racing Association.

Mr. Speaker, it is a pleasure to honor the accomplishments and service of Scott Tucker. Scott has dedicated his career to dealing with an issue many people take for granted, water as a resource. His leadership at the Urban Drainage and Flood Control District will be greatly missed, and I wish Scott all the best in his future endeavors.

#### A TRIBUTE TO REGINA KIM

##### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 9, 2004

Mr. TOWNS. Mr. Speaker, I rise in honor Regina Kim in recognition of her assistance to victims of domestic violence and abuse.

For the past 16 years Regina Kim has reached out to thousands of helpless, desperate, and battered women. As the Executive

Director of the Korean Family Counseling and Research Center, Regina assists women victims of domestic violence, physical and mental harassment, and substance abuse with her compassion and dedication. Through counseling and a 24-hour hotline, crisis intervention services, victim advocacy and public education, the Center's mission of helping women and girls taking charge of their lives is put in practice every day. Regina's round-the-clock dedication to those in need is both inspiring and heartwarming.

The Korean Family Counseling and Research Center was the only counseling center for New York's Korean community when it was founded 31 years ago. Today, the rapid growth in Korean immigration to our city has increased the important role of the center.

By providing hope and encouragement to countless women and their families, Regina has won admiration from her colleagues, the local community, as well as people in Korea. In 1992, she was presented the Social Services Recognition Award by the Korean government for her contribution to the Korean-American community. She has also been honored by the City of New York with an award for Distinguished Leadership in the field of Social Services and an award for Exemplary Leadership, Commitment, and Advocacy on Behalf of all New Yorkers.

Regina was educated at the Chong-gu College in Dae-gu, Korea and at the St. Stephens Outreach Network (Social Welfare). She is an active member of The Advisory Council on Democratic and Peaceful Unification and the Civil Air Patrol. This organization also presented her with an award for Distinguished Social Services.

Mr. Speaker, Regina Kim has helped thousands of women who have been victims of domestic violence and abuse. As such, she is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

#### DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

SPEECH OF

##### HON. RUBÉN HINOJOSA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 8, 2004

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4754) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2005, and for other purposes.

Mr. HINOJOSA. Mr. Chairman, I rise today in strong opposition to the Tancredo amendment.

Earlier this summer, I came to the floor to oppose a similar amendment, and I felt obligated, as an American, to come to the floor today to oppose this misguided one.

Community policing has been successful in our diverse neighborhoods because police have proactively convinced immigrants that they should come forward and talk to local police. Mr. Tancredo's amendments would instill additional fear in immigrants, already under attack from certain political forces despite our Nation's history of welcoming them.